

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 19102 of 2006(Y)

STC.3208/2002 of J.M.F.C.,TALIPARAMBA

PETITIONER:

M.ABDUL KAREEM,
S/O.MUHAMMED, SREEKANDAPURAM POST,
KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.M.V.BIPIN

RESPONDENTS:

STATE,
REP. BY THE SECRETARY,
DEPARTMENT OF HOME AFFAIRS,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R.BASANT, J

W.P(C).No.19102 of 2006

Dated this the 8th day of January, 2007

JUDGMENT

The petitioner is the 1st accused in a prosecution under the provisions of the Prevention of Food Adulteration Act. Proceedings were initiated as early as in 2002. When the matter stood posted for arguments, the petitioner filed an application to re-open the evidence. The request appears to have been made on two grounds. The first is to summon the Secretary of the Municipality to produce the documents relating to issue of licence to the 2nd accused. The other purpose is to examine the 1st accused/petitioner as a witness. The learned Magistrate took note of the fact that the applications are hopelessly belated. The learned Magistrate further noted that there is no application filed by the petitioner under Section 315 Cr.P.C to examine the petitioner himself. In the absence of such an application, the prayer to re-open the case has no bona fides, it appears to have been held. So far as summoning of the Secretary of the Municipality is concerned, the learned Magistrate took note of the fact that the petitioner who could have obtained certified copies of the relevant licence register had not applied for the same and the prayer to summon the documents is not proper and just. Accordingly for both these reasons, the prayer was dismissed.

2. The petitioner has come to this Court with a prayer to quash the impugned order, copy of which is produced as Ext.P4,

invoking the powers under Section 482 Cr.P.C. I find absolutely no justification in the prayer. The order makes it clear that the petitioner can produce the certified copy of the P.F.A Licence Register and then apply for examination of the Secretary. The order further indicates clearly that the petitioner has to file an application under Section 315 Cr.P.C if he were to examine himself.

3. This Crl.M.C is, in these circumstances, dismissed. I may however hasten to observe that the petitioner is granted liberty to apply with a proper application under Section 315 Cr.P.C to examine himself as a witness. He can also apply for summoning the Secretary of the Municipality as a witness on condition that he produces the certified copy of the P.F.A Licence Register as directed by the learned Magistrate. Such application under Section 315 Cr.P.C and such fresh application for examination of the Secretary along with copies of the P.F.A Licence Register shall be produced/filed by the petitioner before the learned Magistrate within a period of 15 days from this date. In that event, the learned Magistrate shall consider the same afresh and pass appropriate orders.

4. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-

